COMMISSION REGULATION (EC) No 1447/2004

of 13 August 2004

imposing provisional safeguard measures against imports of farmed salmon

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94 [1], as last amended by Council Regulation (EC) No 2474/2000 [2], and in particular Articles 6 and 8 thereof,

Having regard to Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) 3420/83 [3], as last amended by Regulation (EC) No 427/2003 [4], and in particular Articles 5 and 6 thereof,

After consultations within the Advisory Committee established under Article 4 of Regulation (EC) No 3285/94 and of Regulation (EC) No 519/94 respectively,

Whereas:

1. PROCEDURE

(1) On 6 February 2004, Ireland and the United Kingdom informed the Commission that trends in imports of farmed Atlantic salmon appeared to call for safeguard measures under Regulations (EC) No 3285/94 and 519/94; submitted information containing the evidence available as determined on the basis of Article 10 of Regulation (EC) No 3285/94 and Article 8 of Regulation (EC) No 519/94; and requested the Commission to take safeguard measures under those instruments.

(2) Ireland and the United Kingdom provided evidence that imports into the European Community of farmed Atlantic salmon are increasing rapidly both in absolute terms, and relative to Community production and consumption.

(3) They alleged that the increase in the volume of imports of farmed Atlantic salmon has, among other consequences, had a negative impact on the prices of like or directly competitive products in the Community, and on the market share held by the Community producers, resulting in damage to the Community producers.

(4) Ireland and the United Kingdom further advised that, based on the information submitted by the Community producers, any delay in the adoption of safeguard measures by the European Community would cause damage which it would be difficult to repair, and that measures should therefore be adopted as a matter of urgency.

(5) The Commission informed all Member States of the situation and consulted with them on the terms and conditions of imports, import trends and the evidence as to serious injury, and the various aspects of the economic and commercial situation with regard to the Community product in question.

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[1] OJ L 349, 31.12.1994, p. 53.
[2] OJ L 286, 11.11.2000, p. 1.
[3] OJ L 67, 10.3.1994, p. 89.
[4] OJ L 65, 8.3.2003, p. 1.

(6) On 6 March 2004, the Commission initiated an investigation relating to serious injury or threat thereof to the Community producers of the product like or directly competitive with the imported product, which has been defined as farmed salmon, whether or not filleted, fresh, chilled or frozen ('the product concerned') [1], as explained below.

(7) The Commission officially advised the exporting producers and importers as well as their representative associations known to be concerned, the representatives of exporting countries and the Community producers of the investigation. The Commission sent questionnaires to all these parties, to representative associations of salmon farmers in the Community, and to those parties who made themselves known within the time limits set in the Notice of Initiation. Pursuant to Articles 5 of Council Regulation (EC) No 519/94 and 6 of Council Regulation (EC) No 3285/94 the Commission also gave parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(8) Certain governments, certain exporting producers and their representative associations, the Community producers, suppliers, processors and importers and their representative associations submitted comments in writing. The oral and written comments submitted by the parties were considered and taken into account in reaching the provisional findings. All the information which was deemed necessary for the purpose of a provisional determination was sought and verified. Verification visits were carried out at the premises of eight Community producers.

(9) All parties were informed of the essential facts and considerations on the basis of which it was intended to impose provisional safeguard measures and the form of the proposed provisional measures. They were granted the opportunity to submit comments and these were considered, and, where deemed appropriate, taken into account in the preliminary findings.

2. LIST OF COOPERATING PARTIES

Producers

Ardvar Salmon Ltd, Inverness, Scotland, United Kingdom.

Atlantic West, Western Isles HS7 5LZ, Scotland, United Kingdom.

Hennover Salmon, West George Street, Scotland, United Kingdom.

Pan Fish Scotland Ltd, Argyll, Scotland, United Kingdom.

Loch Duart Ltd, Scourie By Lairg Sutherland, Scotland, United Kingdom.

Marine Harvest (Scotland), Craigcrook Road, Scotland, United Kingdom.

Orkney Salmon Ltd, Bellshill, Scotland, United Kingdom.

Stolt Sea Farm Ltd, Western Isles, Scotland, United Kingdom.

West Minch Salmon Ltd, Western Isles, Scotland, United Kingdom.

Western Isles Seafood Co Ltd, Western Isles, Scotland, United Kingdom.

Sidinish Salmon Ltd, Western Isles, Scotland, United Kingdom.

Creevin Salmon, Mountcharles, Ireland.

Marine Harvest Ireland, County Donegal, Ireland.

[1] OJ C 58, 6.3.2004, p. 7.

Importers/processors

Laschinger GmbH, Bischofsmais, Germany.

Syndicat National de l'Industrie du Saumon Fumé, Paris Cedex 14, France.

Vensy España SA, Malaga, Spain.

SIF France, Boulogne sur Mer, France.

Moulin de la Marche, Chateaulin, France.

Exporters

Aalesundfisk AS, Aalesund, Norway.

Marine Harvest Norway AS, Bergen, Norway.

Cultivos Yadran SA, Renca, Chile.

Invertec Pesquara Mar de Chiloe SA, Providencia, Chile.

Marine Harvest Chile SA, Puerto Montt, Chile.

Pesca Chile SA, Piso 6, Chile.

Compañia Pesquera Camanchaca SA, Puerto Montt, Chile.

Chilefood Sociedad Anonima, Montalva No 4.800, Chile.

Fjord Seafood Chile SA, Puerto Montt, Chile.

Pesquera Los Fiordos Ltda, Puerto Montt, Chile.

Salmones Pacific Star SA, Santiago, Chile.

Patagonia Salmon Farming SA, Puerto Montt, Chile.

Salmones Mainstream SA, Puerto Montt, Chile.

Yadran Quellon SA, Santiago, Chile.

Salmones Friosur, Puerto Chabuco, Chile.

Aguas Claras, Puerto Montt, Chile.

Pesquera EICOSAL, Puerto Montt, Chile.

Cultivos Marinos Chiloe, Chiloe Island, Chile.

Patagonia Salmon Farming, Puerto Montt, Chile.

Salmones Multiexport Ltda, Puerto Montt, Chile.

East Salmon P/F, Klaksvik, Faeroe Islands.

Faroe Seafood Prime, Torshavn, Faeroe Islands.

P/F Bakkafrost, Glyvrar, Faeroe Islands.

Landshandilin P/F, Torshavn, Faeroe Islands.

Viking Seafood P/F, Strendur, Faeroe Islands.

S. A. Salmon Sp/f, Faeroe Islands.

PRG Export Limited, Gota, Faeroe Islands.

P/F Vestsalmon, Kollafjørdur, Faeroe Islands.

Samherji hf, Akureyri, Iceland.

Norwegian Seafood Federation, Bergen, Norway.

The Faeroe Fish Farming Association, Tórshavn, The Faeroe Islands.

Suppliers

Ewos, West Lothian, United Kingdom.

Havsbrun Ltd, Fuglafjordur, Faeroe Islands.

Landcatch Ltd, Argyll, United Kingdom.

3. PRODUCT CONCERNED

(10) The product in respect of which the Commission was informed that trends in imports appear to call for safeguard measures is farmed Atlantic salmon, whether or not filleted, fresh, chilled or frozen.

(11) It is considered that to restrict the product concerned to farmed Atlantic salmon would be to define the product concerned too narrowly. Based on the physical characteristics of different species of salmon (size, shape, taste etc.), the production process, and the substitutability of all types of farmed salmon from the perspective of the consumer, it is considered that all farmed salmon is a single product. Similarly, whilst farmed salmon is sold in different preparations (whole fish gutted, whole fish head-off and gutted, fillets), these different preparations all serve the same end-use and are readily capable of being substituted.

(12) Some parties argued that frozen salmon is a different product to fresh salmon and should not be considered as part of the product concerned. One party claimed that it is preferred by processors whilst consumers prefer fresh salmon. Another claimed that it is unsuitable as a raw material for salmon smoking. These claims were found to be unsubstantiated. Processors use both fresh and frozen farmed salmon and it was found that any differences are minimal. Further, both preparations serve the same end-use. Therefore, this argument had to be rejected.

(13) Therefore, it is considered that farmed (other than wild) salmon (whether fresh, chilled or frozen) in the different preparations described is a single product. It is currently classified within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13.

4. LIKE OR DIRECTLY COMPETITIVE PRODUCTS

(14) A preliminary examination has been undertaken to establish whether the product produced by the Community producers (hereinafter referred to as 'the like product') is like or directly competitive with the imported product concerned.

(15) In reaching a preliminary determination, the following preliminary findings in particular were taken into account.

(16) (a) the imported product and the Community product share the same international classification for tariff purposes at HS code level (six digits). Furthermore, they share the same or similar physical properties such as taste, size, shape and texture. The domestic product is often marketed as a premium quality product and often enjoys a price premium at the retail level. However, 'likeness' does not require products to be completely identical, and the minor variations in quality are not sufficient to change the overall finding of likeness between the imported and domestic products;

(b) the imported product and the Community product were sold via similar or identical sales channels, price information was readily available to buyers and the product concerned and the product of the Community producers competed mainly on price;

(c) the imported product and the Community product both serve the same or similar end-uses, they were, therefore, alternative or substitute products and were easily interchangeable;

(d) the imported product and the Community product were both perceived by consumers as alternatives to satisfy a particular want or demand, in this respect the differences identified by certain exporters and importers were simply minor variations.

(17) Therefore, the preliminary conclusion reached is that the imported product and the Community product are 'like or directly competitive'.

5. **IMPORTS**

5.1. **Increase in imports**

5.1.1. *Introduction*

(18) A preliminary examination has been undertaken based on data for the period 2000 to 2003, focusing on imports in the most recent period for which data are available, to establish whether the product concerned is imported into the Community in such greatly increased quantities, absolute or relative to total Community production, and/or on such terms or conditions as to cause, or threaten to cause, serious injury to the Community producers. One party claimed that the import increase was due to the fact that imports of wild salmon were included in the import data. Eurostat data does not distinguish between wild and farmed salmon. However, the available information (US and Canadian export statistics) indicates that imports of wild salmon to the Community are small and have, in any event, decreased over the period 2000 to 2003. One party also claimed that 2000 was an inappropriate base year, claiming that salmon prices were unusually high in that year. However, the analysis focuses on the key developments in the most recent period, and changing the base year to 1999 or 2001 would not change the outcome of that analysis.

(19) The provisional findings set out below are thus based on the data from 2000 to 2003.

5.1.2. *Volume of imports*

	2000	2001	2002	2003
Imports (t)	372 789	379 764	396 772	455 948
Year-on-year increase		2 %	4 %	15 %
Total Community production (tonnes)	146 664	161 854	168 374	180 593
Imports/production (t)	254 %	235 %	236 %	252 %

Source: Import figures provided by Eurostat. Community production calculated from government data for Ireland and the United Kingdom and industry data for France and Latvia.

(20) Imports increased from 372 789 tonnes in 2000 to 455 948 tonnes in 2003, an increase of 22 %. Between 2002 and 2003, imports increased by 15 %.

(21) Relative to Community production, imports fell from 254 % in 2000 to 235 % in 2001, but have since increased again to 252 % in 2003.

(22) Quarterly figures for the years 2002 and 2003 show that in 2003 quarterly imports were higher than in the same quarter in 2002, and that the highest increases (up to 20,8 %) occurred in the second half of 2003.

	Q1 2002	Q2 2002	Q3 2002	Q4 2002
Volume (t)	86 753	96 988	93 375	119 657

	Q1 2003	Q2 2003	Q3 2003	Q4 2003
Volume (t)	92 667	108 655	112 862	141 763
Year-on-year increase	6,8 %	12,0 %	20,8 %	18,5 %

Source: Eurostat.

5.1.3. *Conclusion*

(23) Based on the import data for the period from 2000 to 2003, it is concluded on a preliminary basis that that there is a recent, sudden, sharp and significant increase in imports, both absolute and relative to production.

5.2. **Prices of imports**

(24) The conditions under which imports have been made have also been considered by reference to Eurostat data. While the data includes a small quantity of wild salmon, this is considered to have had no appreciable effect on prices.

(25) In this regard, it should be noted that between September 1997 and May 2003, a significant proportion of imports of farmed salmon from Norway (which has around 55 % of the Community market) were subject to an MIP. In the course of 2002, violations of the MIP undertakings by certain Norwegian exporting producers began to undermine the effectiveness of that instrument and caused price falls. The proposed termination of the AD and CVD measures against imports from Norway was then announced in December 2002 and those measures were terminated in May 2003. Import prices during 2002 and the first half of 2003 fell partly due to violation of, or voluntary withdrawal from, the MIP by some Norwegian exporters.

(26) Import prices fell by 28,5 % between 2000 and 2003. This is considered to be outwith the normal price fluctuation on the market because of the extent of the decrease in absolute terms, and because exporting producers were not earning supernormal profits in the year 2000 and the cost of production has not materially decreased between 2000 and 2003.

	2000	2001	2002	2003
Import price	3,55	2,99	2,87	2,54

Source: Eurostat.

(27) Recent price developments are more clearly illustrated by quarterly data. Having remained relatively stable at between EUR 2,83 and EUR 2,93 in 2002, import prices dropped from EUR 2,87 in Q1 2003 to EUR 2,24 in Q3 2003 before making a partial recovery to EUR 2,48 in Q4 2003.

	Q1 2002	Q2 2002	Q3 2002	Q4 2002
Import price	2,83	2,93	2,86	2,85

	Q1 2003	Q2 2003	Q3 2003	Q4 2003
Import price	2,87	2,62	2,24	2,48

Source: Eurostat.

(28) Whilst wholly reliable Eurostat data is not yet available for Q1 2004, currently available information indicates that prices increased to average around EUR 2,53/kg in Q1 2004. This is slightly below their average in 2003, and, the latest information available indicates that prices are again following a downward trend and are very low. While some claim that there will be price increases in the coming months, this was not substantiated and the current very low prices are indeed confirmed by industry sources in exporting countries.

5.3. **Market share of imports**

(29) The market share of imports fell from 73,5 % in 2000 to 71,9 % in 2001, and remained stable at about this level in 2002 (72 %). In 2003, imports increased their market share from 72,0 % in 2002 to 75,0 %, an increase of 3,0 percentage points and their highest level in the period considered.

	2000	2001	2002	2003
Imports	73,5 %	71,9 %	72,0 %	75,0 %

6. **DEFINITION OF THE COMMUNITY PRODUCERS**

(30) Almost all production of the product concerned in the Community was made in Scotland and Ireland, although there are also two producers in France and at least one in Latvia.

(31) In the year 2003, total Community production of the product concerned was 180 593 tonnes, of which the producers which cooperated fully in the provisional stage of the investigation accounted for 85 231 tonnes, equivalent to 47 % of the total Community production. They therefore represent a major proportion of total Community production within the meaning of Article 5(3)(c) of Regulation (EC) No 3285/94 and Article 15(1) of Regulation (EC) No 519/94. They are accordingly considered as the Community producers for the purposes of the provisional determinations.

7. **UNFORESEEN DEVELOPMENTS**

(32) Towards the end of 2002, Norwegian forecasts of their overall salmon production in 2003 were around 446 000 tonnes. By February 2003, Kontali Analyse (an industry information provider) was forecasting harvesting of 475 000 tonnes. This was 30 000 tonnes higher than Norwegian production in 2002, but it was expected that most of this increase would be directed to emerging markets such as Russia and Poland and to markets in the Far East such as Japan, Hong Kong, Taiwan and China. Growth in the Far East had been negative since 2000, but, Norway expected to reverse this decline in 2003 by opening up the Chinese market.

(33) In fact, actual Norwegian production in 2003 was 509 000 (around 63 000 tonnes higher than had been forecast by the Norwegian Government), and harvesting was 6 % higher than Kontali's harvesting forecast. Production was also 64 000 tonnes (or 14 %) higher than Norwegian production in 2002. At the same time, far from reversing the decline in sales in the Far East, the rate of decline actually accelerated to -6,0 %. In addition, growth in emerging markets also declined — from 47 % to 32 % in the case of Russia, and from 50 % to 30 % in the case of European countries outwith the Community. Indeed, overall global consumption grew by only 6 % compared to 9 % in 2002 and 14 % in 2001. This, as it turned out, erroneous forecast of production, combined with the development of world consumption, was unforeseen.

(34) In consequence, Norway experienced a serious problem of overproduction, a problem which it appeared to recognise. Indeed, in August 2003, in an effort to remove excess product from the market, certain Norwegian producers considered freezing 30 000 tonnes of farmed salmon. However, this idea was later abandoned and the market continued to be oversupplied.

(35) In addition, in December 2002 the Commission had announced its proposal to terminate anti-dumping and anti-subsidy measures against Norway. These were subsequently terminated in May 2003. The measures had in large part taken the form of MIPs, which in effect guaranteed a minimum price for exporting producers. When the proposed withdrawal of the measures was announced, many Norwegian exporting producers either voluntarily gave up their undertakings or simply ceased to observe them. Norwegian salmon producers as a whole are heavily indebted to the Norwegian banks. As prices slid, and in the absence of MIPs, the banks lending to Norwegian producers began to take steps to reduce their exposure by demanding repayment. This created a vicious circle which led to an increase in harvesting, further pressure on prices and increased pressure to export. Although some temporary and small adjustment of import prices was to be expected as a result of the termination of the measures against Norway, the extent of the fall in prices (exacerbated by the problem of over-production) and the vicious circle which that created because of the operation of the banking system described above, were unforeseen.

(36) During 2003, the value of the Norwegian kroner fell by 13 % relative to the euro, by 12 % relative to the Danish krone and by 14 % relative to the Swedish krone. Although currency movements are to be expected, these were relatively large and sustained fluctuations and outwith the normal range of currency fluctuations. Although the euro also strengthened by comparison with the British pound, the British pound fell by only 6 % making farmed salmon produced in the United Kingdom more expensive in the euro-zone relative to Norwegian imports than it had been at the beginning of that year. The principal importers of Norwegian farmed salmon in the Community are Denmark, Sweden, Germany and Poland. However, much of these imports are directly transported within the Community to euro-zone countries such as France and Spain. In addition, over half of the farmed salmon imported to Denmark, and almost all of that imported to Poland and other new Member States, is re-sold in the euro-zone after processing. In consequence, the fall in the value of the Norwegian kroner relative to the euro had an effect not only on Norwegian imports directly to the euro-zone, but also on imports to those countries such as Denmark and Poland which process farmed salmon to re-sell in the euro-zone. The effect of these currency movements was to make the European Community market as a whole more attractive to Norwegian exporting producers, to some extent insulating them from the effect of a decrease in their prices in euro and krone, and helping them to maintain their export revenues in their domestic currency. Nevertheless, unit prices fell even in Norwegian kroner. At the same time, these currency movements made imported salmon cheaper in the European Community and made importing more attractive to importers and users such as the processing industry. In consequence, much of the overproduction in Norway was exported to the European Community.

(37) The preliminary analysis is that the unforeseen development which caused the increase in imports was significant overproduction in Norway (despite lower forecasts), exacerbated by the failure of the Norwegian industry to achieve forecast growth in exports to markets outwith the Community, the unexpected extent of the effects of the termination of trade defence measures against Norway and the operation of the Norwegian banking system as described above, together with the rise in the value of the euro which made the Community market as a whole a more attractive destination for Norwegian exports. These developments and their effect will be investigated further at the definitive stage of this proceeding.

8. SERIOUS INJURY

8.1. Introduction

(38) In order to make a provisional determination of serious injury to the Community producers of the like product, a preliminary evaluation of all relevant factors of an objective and quantifiable nature having a bearing on their situation has been undertaken. In particular, for the product concerned, an evaluation has been carried out of the development of global Community data for consumption, production capacity, production, capacity utilisation, employment, productivity, overall sales and market share. These global data are based on statistical information gathered by the United Kingdom and Ireland through comprehensive industry surveys. As concerns company specific data, these are based upon data provided by the cooperating Community producers on cash flow, return on capital employed, stocks, price, undercutting and profitability for the years 2000 to 2003.

(39) It should be noted at the outset that in the Community salmon farming industry, as elsewhere, there is a long and relatively inflexible production cycle leading to harvesting and that, once harvested, the farmed salmon must be sold immediately since they can only be stored for more than a few days if frozen. Freezing is expensive, and in any event, there is limited freezing capacity in the Community. In consequence, the level of production must be planned at least two years in advance and, once planned, cannot be altered except at the margins. Therefore, oversupply has a delayed effect on production, but an immediate and severe effect on prices.

8.2. Analysis of the situation of the Community Producers

8.2.1. *Consumption*

	2000	2001	2002	2003
Consumption (t)	507 705	527 970	550 943	607 728
Year-on-year increase		4,0 %	4,4 %	10,3 %

(40) Consumption of the product concerned in the Community was provisionally established on the basis of the total production by all producers in the Community and total imports of the product concerned into the Community as reported by Eurostat, less European Community exports.

(41) Between 2000 and 2003, consumption in the Community increased by 19,7 % from 507 705 tonnes to 607 728 tonnes.

(42) It should be noted that salmon has a relatively high level of price elasticity and the markedly higher increase in consumption in 2003 can therefore be at least partially explained by the fall in prices at wholesale level.

8.2.2. *Production capacity and capacity utilisation*

	2000	2001	2002	2003
Capacity (t)	340 029	340 294	339 359	347 671
Capacity utilisation	43 %	48 %	50 %	52 %

(43) Farmed salmon production in the European Community is effectively limited by government licences specifying the maximum amount of live fish which may be held in the water at any place at any point in time. Capacity figures given are based on the total quantity licensed rather than the physical fish-holding capacity of the cages operated by the Community producers. The cost of applying for and maintaining licences is relatively low and therefore the cost of maintaining excess capacity is also low.

(44) Having remained stable between 2000 and 2002, the preliminary investigation showed that theoretical production capacity increased by 2,2 % between 2000 and 2003.

(45) Capacity utilisation (i.e. the quantity of fish in the water compared to the quantity licensed) increased from 43 % in 2000 to 48 % in 2001 and then increased steadily until 2003 when it reached 52 %. This reflects the fact that production increased by 23 % between 2000 and 2003 whilst the licensed capacity increased by only 2,2 %.

8.2.3. *Production*

	2000	2001	2002	2003
Production (t)	146 664	161 854	168 374	180 593

(46) Production (taken as fish harvested) grew by 23 % from 146 664 tonnes in 2000 to 180 593 tonnes in 2003, following a single year increase of 7 %.

(47) It should be noted that due to the long production cycle, production is planned at least two years in advance and that, once the production cycle is commenced, production levels cannot be adjusted except at the margins.

8.2.4. *Employment*

	2000	2001	2002	2003
Employment (end of period)	1 269	1 162	1 195	1 193

(48) Employment in relation to the product concerned fell by 6 % from 1 269 in 2000 to 1 193 in 2003. There was a reduction in employment in 2001, employment partially recovered in 2002 and remained stable in 2003.

8.2.5. *Productivity*

	2000	2001	2002	2003
Productivity (tonnes/employee)	115	139	141	151

(49) Productivity has consistently increased throughout the period under consideration from 115 tonnes in 2000 to 151 tonnes in 2003. This reflects the increasing use of automated feed systems and other labour saving devices, and the strong pressure to reduce costs in the face of mounting financial losses.

8.2.6. *Sales volume*

	2000	2001	2002	2003
Sales in the Community (tonnes)	134 916	148 206	154 171	151 780

(50) Between 2000 and 2002, the Community producers' sales of the like product increased by 14,3 % from 134 916 to 154 171 tonnes. This increase occurred against a background of an increase in consumption over the same period of 8,5 %. Between 2002 and 2003, the Community producers' sales decreased by 1,6 % from 154 171 to 151 780 tonnes, notwithstanding an increase in consumption between 2002 and 2003 of 10,3 %.

8.2.7. *Market share*

	2000	2001	2002	2003
Market share	26,5 %	28,1 %	28,0 %	25,0 %

(51) The Community producers' market share increased from 26,5 % in 2000 to 28,1 % in 2001 and remained at about this level in 2002, but then fell by 3,0 percentage points to 25,0 % in 2003, its lowest level in the period considered. This reflects the fact that imports increased not only in absolute terms, but also relative to consumption, in 2003.

8.2.8. *Cash flow*

Financial year	2000	2001	2002	2003
Cash flow (index)	100	– 221	– 384	– 221

(52) Cash flow could only be examined at the level of the cooperating companies which produced the product concerned rather than in relation to only the product concerned itself. This indicator was therefore seen as less meaningful than the other indicators shown. Nevertheless, it can be seen that there was strongly negative cash flow in 2001, 2002 and 2003.

8.2.9. *Return on capital employed (ROCE)*

Financial year	2000	2001	2002	2003
ROCE	34	– 1	2	– 20

(53) ROCE could also only be examined on the level of the cooperating companies which produced the product concerned rather than in relation to only the product concerned itself. This indicator was therefore also seen as less meaningful than the other indicators. Nevertheless, it can be seen that ROCE fell from 34 % in 2000 to close to zero in 2001 and 2002 before falling to –20 % in 2003.

8.2.10. *Price of the like product*

	2000	2001	2002	2003
Unit prices of Community sales (EUR 1 000/tonne) (*)	3,50	3,23	3,02	2,79

(*) Prices adjusted to ex Glasgow.

(54) The average price of the like product fell by 20,3 % between 2000 and 2003, with a steady decline in prices over that period. Prices reached their lowest point (EUR 2,79/kg) in 2003.

(55) In Q1 2004, the information available indicates that the average unit price of the Community producers' sales increased slightly, in line with the slight increase in average import prices. However, the latest information indicates that prices are again following a downward trend. One party argued that (by reference to average annual exchange rates) price falls were less significant in pounds sterling. Nevertheless, it is considered that the Commission should not diverge from its consistent practice in trade defence cases in using the euro as the unit of currency.

8.2.11. *Costs*

	2000	2001	2002	2003
Average cost of production per tonne (EUR/kilo)	3,1	3,2	3,0	3,1

(56) In addition to price development, the development of costs has also been considered. Costs have fluctuated between EUR 3,0 and EUR 3,2/kg over the period 2000 to 2003.

8.2.12. *Profitability*

	2000	2001	2002	2003
Net profit/loss on Community sales	7,3 %	– 3,3 %	– 2,5 %	– 17,1 %

(57) The profitability of the Community producers' sales in the Community fell from 7,3 % in 2000 to –3,3 % in 2001. Losses became less pronounced in 2002 (–2,5 %) but then increased to –17,1 % in 2003. In 2003, as imports increased to their highest level and the average price of imports fell to its lowest level (EUR 2,54/kg), the average price of the Community product also fell to its lowest level (EUR 2,79/kg). The Community producers' fall in profitability between 2000 and 2003 occurred at the same time as the price per kilo of the Community producers' product fell from EUR 3,50 to EUR 2,79.

8.2.13. *Stocks*

	2000	2001	2002	2003
Closing stock (t)	36 332	39 048	53 178	43 024

(58) Stocks in this context refer to live fish in the water. The Community producers, as all others, have negligible stocks of harvested fish as they have to be sold immediately. Therefore, a fall in closing stock levels indicates a decrease in the quantity of live fish being on-grown for harvesting in the following two years. Therefore, in this case, falling stock levels are an indicator of growing injury.

(59) Stock levels increased from 36 332 tonnes in 2000 up to 53 178 tonnes in 2002 and then declined to 43 024 tonnes in 2003. This represents a fall in stocks between 2002 and 2003 of 19,1 %.

8.2.14. *Conclusion*

(60) It is recalled that the investigation has shown that between 2000 and 2003, and in particular as between 2002 and 2003, imports of the product concerned have taken place in increased quantities and high volumes onto the Community market.

(61) As to the situation of the Community producers, between 2000 and 2002, theoretical production capacity remained more or less stable, whilst production increased by 14,8 %. In consequence, capacity utilisation increased from 43 % to 50 % in this period. Stocks of live fish in the water also increased. There was some loss of employment, whereas productivity increased mostly due to greater use of automation.

(62) Sales volumes increased by 14,3 % between 2000 and 2002 (compared to 8,5 % growth in consumption), and the Community producers' market share increased from 26,5 % to 28,0 %.

(63) However, even in this period prices fell by 13,7 % between 2000 and 2002, and despite a small decrease in costs in 2002 (partly due to higher capacity utilisation and better productivity), this appears to have led to a fall in profitability from 7,3 % in 2000 to losses of – 3,3 % and – 2,5 % in 2001 and 2002. ROCE and cash flow also developed negatively in this period.

(64) Between 2002 and 2003, the position of the Community producers worsened considerably. Although production capacity and production increased (by 7,3 %) in line with previously developed production plans and this led to higher capacity utilisation and improved productivity, all other indicators developed negatively. Stocks of fish in the water fell by 19,1 %. In the face of 10,3 % growth in consumption, the Community producers' sales fell by 1,6 % and they lost market share. In addition, prices fell by a further 7,6 %, whilst costs increased to their average level for the four-year period. This led to a sharp drop in profitability and the Community producers incurred losses of 17,1 %. These losses were reflected in an overall ROCE of – 20 %. Whilst cash flow appeared to improve, this actually reflected reduction in stocks of fish in the water and an inability to reinvest.

(65) Taking account of all of these factors the preliminary conclusion reached is that the Community producers have suffered serious injury in terms of a significant overall impairment of the situation in the position of the Community producers.

9. **CAUSATION**

(66) In order to examine the existence of a causal link between the increased imports and the serious injury, and ensure that injury caused by other factors is not attributed to increased imports, the injurious effects of factors considered to be causing injury have been distinguished from each other, the injurious effects have been attributed to the factors which are causing them, and, after having attributed injury to all causal factors present, it has been determined whether increased imports are a 'genuine and substantial' cause of serious injury.

9.1. **Analysis of causation factors**

9.1.1. *Effect of increased imports*

(67) As shown above, between 2000 and 2003, and in particular as between 2002 and 2003, imports of the product concerned have taken place in increased quantities and high volumes onto the Community market.

(68) Farmed salmon is essentially a commodity product, and the product concerned and the like product compete mainly on price. It is generally accepted that imports, particularly from Norway, are the market leader and price-setter. In consequence, even low levels of undercutting result in price depression for the Community producers.

(69) In the current case, the most important injurious effect of increased imports was the large financial losses to the Community producers. Due to the market and price leadership of imports, increased imports drove down prices throughout the Community. Had imports increased to a lesser degree, this price pressure would also have been lower. Had demand in the Community market been such as to sustain such an increase in imports at substantially higher prices, albeit such an increase would have resulted in lower sales and market share for the Community producers, it is possible that the Community producers would not have suffered serious injury.

(70) Between 2000 and 2002, the price of imports fell by 19 % and was closely followed by the Community producers' prices. Whilst the market share of the Community producers' sales in the Community increased in this period, this reflected production decisions taken in earlier years and in both 2001 and 2002 the Community producers' sales were made at a loss.

(71) Between 2002 and 2003, imports grew by 15 %. The market share of imports grew from 72 % to 75 %, whilst the market share of the Community producers fell from 28 % to 25 %. Over the same period imports grew from 236 % to 252 % of Community production. Thus, imports appear to have increased relative to both Community production and consumption at the expense of the Community producers.

(72) However, the most important aspect of the increase in imports was its effect on the prices and profitability of the Community producers. As noted above, it is generally accepted that imports (particularly from Norway) are the price leader in the Community market for farmed salmon. The existence of undercutting has therefore been examined to establish whether indeed the low priced imports have tended to depress the prices practised by the Community producers.

(73) In order to reach a preliminary determination as to the level of undercutting, price information was examined for comparable time periods, at the same level of trade and for sales to similar customers. Based on a comparison of average ex-Glasgow prices charged by the Community producers and by exporting producers to the Community importers (cif European Community border including customs duty), domestic prices were undercut in the three most recent years by between 3,1 % and 7,1 %. This appears to have resulted in price depression for the Community producers because, due to their large market share, prices are set by imports. In particular, it can be seen that the increase in imports at ever lower prices until Q3 2003 forced the Community producers to continually reduce their prices until Q3 2003 leading to the losses sustained by them in that year.

(74) A direct comparison of import prices and the Community producers' prices confirms this analysis. Import prices fell by 28,5 % between 2000 and 2003, from EUR 3,62 to EUR 2,59/kg including duty. Over the same period, the average price of the like product fell by 20 % from EUR 3,50 to EUR 2,79/kg, with a steady decline in prices over that period.

(75) Between 2002 and 2003, the average unit price of imports fell from EUR 2,93 to EUR 2,59/kg including duty. As imports increased to their highest level and the average price of imports fell to its lowest level (EUR 2,59/kg including duty), import prices led Community producers' prices in a downward trend and the average price of the Community product fell to its lowest level (EUR 2,79/kg). The average unit price of the Community product (adjusted ex-Glasgow) fell from EUR 3,02 to EUR 2,79/kg, representing a fall of 8 %.

	2000	2001	2002	2003
Unit prices of Community sales (EUR 1 000/tonne) (*)	3,50	3,23	3,02	2,79
Unit prices of imports incl. customs duty (EUR 1 000/tonne) (**)	3,62	3,05	2,93	2,59

(*) Prices adjusted to ex Glasgow.
(**) Import prices are cif including import duty of 2 %.

(76) The fall in the Community producers' prices appears to have been the main cause of a significant fall in their profitability. In 2000, when their costs per kilo were EUR 3,1 and their sales price (adjusted ex-Glasgow) was EUR 3,50, the Community producers made a profit of 7,3 %. In 2001 and 2002, although their capacity utilisation, production, productivity, stocks of live fish, sales and market share all increased, they incurred financial losses, reduced overall ROCE and negative overall cash flow as their sales prices (adjusted ex-Glasgow) fell to EUR 3,23 and EUR 3,02 respectively and costs first slightly increased and then fell to EUR 3,2 in 2001 and EUR 3,0 in 2002, respectively. Employment also fell.

(77) In 2003, as prices (adjusted ex-Glasgow) fell to EUR 2,79 under pressure from low priced imports, and with costs at their 2000 level of EUR 3,1, the Community producers incurred a loss of 17,1 %. This was reflected in the negative overall ROCE and cash flow. At the same time their sales volume dropped by 1,6 % and their market share fell by 3,0 percentage points, as the volume and market share of imports increased. Albeit capacity, capacity utilisation and production, productivity increased and employment remained stable, the effect of the increase in low priced imports on capacity utilisation and production and employment is delayed. That production can be expected to decrease as a result of the increase in imports is shown by the decrease in stocks of live fish in 2003.

(78) For the foregoing reasons, the preliminary conclusion is that there is a correlation between the increase in imports and the serious injury suffered by the Community producers, and that the increase in low priced imports has had injurious effects on the Community producers, particularly in terms of downward pressure on prices on the Community market resulting in large financial losses to the Community producers.

9.1.2. *Effect of changes in consumption in the United Kingdom*

(79) One party argued that there had been an alleged fall in consumption in the United Kingdom in 2003 and that this had caused injury to the Community producers. However, the United Kingdom market cannot be isolated from the overall Community market and European Community consumption increased by 19,7 % between 2000 and 2003, and by 10,3 % between 2002 and 2003. Therefore, the reason for the Community producers' substantial losses in 2003 appears to have been the low prices rather than an alleged fall in consumption.

9.1.3. *Effect of changes in export performance*

	2000	2001	2002	2003
Exports (t)	11 748	13 648	14 203	28 813

(80) The effect of variations in the level of exports has also been examined. Exports increased throughout the period considered, and indeed doubled between 2002 and 2003 and it is therefore concluded, despite a claim by one party to the contrary, that the changes in the level of exports were not a cause of the serious injury suffered by the Community producers. In any event, data relating to profitability is based on data relating to Community sales only.

9.1.4. *Effect of any excess capacity*

(81) Whether injurious effects may have resulted from excess capacity amongst the Community producers has also been examined. Theoretical capacity increased during the period of the investigation by 2,2 % between 2000 and 2003 – by considerably less than production and consumption. In addition, as previously noted, the theoretical capacity is the total quantity of live fish for which government licences are held. The cost of applying for and maintaining licences is low. Indeed, the main cost drivers are the cost of smolts (baby fish), feed and labour. Therefore, the preliminary conclusion is that the increase in theoretical capacity did not cause injurious effects to the Community producers.

9.1.5. *Effect of competition amongst the Community producers*

(82) Some exporters argued that the reason behind the fall in the price of salmon on the Community market was an oversupply by the Community producers. However, imports increased by 15 % in 2003 whereas the Community producers' sales in the Community decreased. Further, imports are the price leader in this market, not the Community producers. Indeed, an examination of the pricing behaviour of all parties in 2002 and 2003 clearly shows that imports were consistently sold at lower prices than those of the Community producers, and that the Community producers' prices followed those of imports in a downward trend. The effect of competition amongst the Community producers balances itself amongst them — losses incurred by one are offset by gains made by another *ceteris paribus*. Therefore, the preliminary conclusion is that competition amongst the Community producers was not a cause of the serious injury observed.

9.1.6. *Effect of increased mortality on production costs*

(83) One party argued that higher than normal fish mortality rates in Ireland and disease outbreaks in the United Kingdom and Ireland in 2002 and 2003 could have increased production costs and interrupted the normal production cycle for some producers. The information currently available suggests that these phenomena were limited to a small number of farms. Further, as the table below shows, the Community producers' production costs fell in 2002 and were close to their four year average in 2003. Therefore, the preliminary conclusion is that higher than normal fish mortality rates were not the cause of material injurious effects. Nevertheless, this argument will be further investigated in the course of the definitive stage of the investigation.

	2000	2001	2002	2003
Average cost of production (EUR 1 000/tonne)	3,1	3,2	3,0	3,1

9.1.7. *Effect of higher production costs generally*

(84) One party argued that the Norwegian industry has lower production costs than the Community producers and that this is a reason for increased imports and serious injury. The information currently available suggests that whilst Norway enjoys advantages in relation to certain costs, the Community producers enjoy advantages in relation to others. Overall, it is noted that whilst the Community producers are incurring significant losses in the current market, so too are Norwegian producers. As noted in point 8.2.12, the Community producers made a loss of – 2,5 % in 2002. Norwegian Government data indicate that in 2002 for a sample of 151 salmon and rainbow trout farms losses were – 13 %. (No comparable data have yet been published for 2003.) In addition, they were operating under a heavy burden of debt, representing a significant proportion of their total costs. Their total debt (excluding equity and provisions) was NOK 6,8 billion compared to a total turnover of NOK 5,7 billion [1]. This situation has in some cases led to the Norwegian banks effectively taking ownership of Norwegian producers. Therefore, the preliminary conclusion is that Norwegian producers are not more efficient than the Community producers, but this argument will be further investigated in the course of the definitive stage of the investigation.

9.1.8. *Higher transport costs in Scotland*

(85) One party argued that there is a less developed infrastructure in remote areas of Scotland and that this increases costs and may cause injury to Community producers. In this regard, it is noted that fish farming in Norway, which is the Community market leader, is often undertaken in remote locations with relatively poor transport infrastructure.

[1] Norwegian Directorate of Fisheries Statistical Survey 2002.

(86) Transport costs are not a large part of the overall cost of production of farmed salmon and vary according to the origin of goods and the destination to which they are to be delivered. Overall, there is not considered to be a significant difference in the costs of transport to the Community market as between Norway, the United Kingdom and Ireland. In addition, exporting producers (which by definition are located outside the European Community) are generally likely to have higher transport costs when selling to the Community market. Therefore, it is not considered that higher transport costs in Scotland have contributed to the injury to the Community producers.

(87) Further and in any event, no evidence was produced to the effect that transport costs in Scotland have increased in recent years, and therefore, higher transport costs could not explain the recent increase in financial losses suffered by the Community producers.

9.1.9. *Other factors*

(88) No other causation factors of possible relevance were identified during the provisional stage of the investigation.

9.2. **Attribution of injurious effects**

(89) The increase in imports had only a limited negative effect on the quantities sold by the Community producers, although their sales and market share dropped somewhat in 2003. However, most importantly it appears that the considerable increase in imports had a devastating effect on the profitability of the Community producers, given the accompanying price drop. Given that imports (with around 70-75 % of the market) enjoy the position of price-leader, the downward spiral in import prices had a considerable depressing effect on Community producers' prices. This resulted in considerable losses to the Community producers. No other factors which could have contributed to the injury apart from the increase in low-priced imports were identified at this stage.

9.3. **Conclusion**

(90) Therefore, having determined that no material injurious effects resulted from the other known factors, the preliminary conclusion is reached that there is a genuine and substantial link between increased low-priced imports and serious injury to the Community producers.

10. **CRITICAL SITUATION**

(91) A preliminary determination has been made that critical circumstances exist in which delay would cause damage to the Community producers which it would be difficult to repair. They have suffered a serious decline, notably in live fish stocks, unit prices, profitability and ROCE as a result of increased low-priced imports of the product concerned.

(92) The financial situation of the Community producers is extremely precarious. They have suffered substantial losses in 2003 (–17,1 %). In consequence, a number of Community producers have already gone into bankruptcy or receivership, and many others are planning either to reduce their production or withdraw from the market altogether. A number of the Community producers are trying to sell their businesses as going concerns. However, given that they are making losses and the recent bankruptcies and receiverships there is little interest from potential purchasers. Others are simply closing down their operations in order to stem their losses.

(93) In 2003 and the first months of 2004, five Community producers have gone into bankruptcy or receivership. A further two have been taken over by feed companies (to whom they owed substantial debts) and are in the course of being run down. In addition, seven more Community producers have closed down or are in the course of closing down their operations.

(94) The substantial losses in 2003 have resulted in certain Community producers, particularly independent companies which are unable to rely on financial support from a larger group, relying on extended credit from feed companies and using overdraft facilities as a source of medium to long term financing. Some companies are being forced to sacrifice profitability in order to secure sufficient cash flow to meet their financial commitments (for example, by harvesting fish before they reach an optimum size). Whilst this strategy may ensure their survival for a short period, it is further reducing their profitability and thus their medium and long term viability.

(95) Without an immediate and significant upturn in the outlook for salmon farming in the Community more Community producers will be forced into bankruptcy or receivership as feed companies and banks seek to limit their exposure to bad debts. Some Community producers have already had their overdraft facilities terminated or reduced. In the United Kingdom, the national authorities have held discussions with the banks to determine the reasons for withdrawal of support. However, the banks have stressed that they must operate according to commercial criteria.

(96) It can be anticipated that without the application of provisional safeguard measures to the European Community market, imports of the product concerned into the Community will continue at a high level, and, particularly as a result of the price depression which this will continue to cause, the Community producers will continue to sustain losses and more will be forced into bankruptcy. Such damage would be difficult to repair given that businesses will have closed down, former employees will have been forced to relocate to find work and lenders will be cautious about providing finance to re-open failed ventures. If this is to be avoided, provisional safeguard measures must be taken.

10.1. **Conclusion**

(97) Therefore, bearing in mind the precarious economic situation of the Community producers as a result of the large losses which they have sustained, and the continuing threat posed by exporting producers, it is considered that there exists a critical situation in which any delay in the adoption of provisional safeguard measures would cause damage which it would be difficult to repair. It is therefore concluded that provisional safeguard measures should be adopted without delay.

11. **FINAL CONSIDERATIONS**

(98) The preliminary analysis of the findings of the investigation confirms the existence of a critical situation and the need for provisional safeguard measures in order to prevent further injury to the Community producers which it would be difficult to remedy.

11.1. **Form and level of provisional safeguard measures**

(99) Community production of farmed salmon is insufficient to meet demand and it is therefore necessary to ensure that the measures taken are not such as to deny exporting producers access to the Community market. As the main cause of damage to the Community producers appears to be the large volume imports leading to low price and causing price depression and suppression, the measures taken should be designed to increase prices but not to unnecessarily limit supply.

(100) Regulations (EC) No 3285/94 and (EC) No 519/94 provide that provisional safeguard measures should take the form of tariff increases. Therefore, preference should be given to tariff based measures where these are appropriate. In the current case, in order to keep the Community market open and ensure the availability of supply to meet demand, it is appropriate to establish quotas free of safeguard duties reflecting traditional levels of imports. Beyond those quotas, an additional duty should be payable on imports. Traditional levels of imports of farmed salmon can then continue without payment of any additional duty, and unlimited quantities can be imported albeit upon payment of the additional duty.

(101) In order to preserve traditional trade flows and ensure that the Community market also remains open to minor players, the tariff quotas should be divided amongst those countries/regions having a substantial interest in supplying the product concerned, and a part should be reserved to other countries. After consultation with Norway and the Faeroes which have such a substantial interest and represent substantial import shares, it is considered appropriate to assign a specific tariff quota to each of these countries based on the proportions of the total quantity of the product supplied by that country during the three year period 2001 to 2003. The vast majority of the imports in this period originated in Norway and the Faeroes and therefore country specific tariff quotas should apply to these countries and one other to all other countries. In order to avoid an unnecessary administrative burden, the tariff quotas should operate on a first come first served basis.

(102) It appears that in normal circumstances Community consumption of farmed salmon is growing at between around 4 % to 5 % annually taking into account the high growth levels observed in the new Member States. In order to take account of this growth, the tariff quotas (based on average imports in 2001 to 2003) should be increased by 5 %. As the salmon market is seasonal, with higher imports and sales in the second semester than the first, the tariff quotas should be seasonally adjusted. The quotas have been calculated on a whole fish equivalent basis (WFE) and conversion ratios to fillets and non fillets actually imported are 1:0,65 and 1:0,9 respectively.

(103) The additional duty should be set at a level such as to provide adequate relief to the Community producers but at the same time should not constitute an unnecessarily onerous burden on importers and users. An *ad valorem* duty is considered unsuitable as it would act as an incentive to lower import prices free of duty, and would increase in real terms if a price increase occurs. Therefore a fixed amount of duty should be set.

(104) The level of underselling, which reflects the extent to which the price of the imported product is lower than the price which the Community producers could be expected to achieve in a non-injurious situation, is considered to be a reasonable basis for fixing the level of duty. In order to take account of the principle of proportionality in this particular case (where 70-75 % of the product concerned is imported), the level of underselling was provisionally calculated on the basis of the weighted average non-injurious price per tonne of the Community product, based on the cost of production of the Community product plus a minimal level of profit for this industry (5 %). This non-injurious price was compared with the preliminary weighted average price per tonne of the imported product concerned during Q1 2004 [1]. The difference between these two prices was expressed as a percentage of the CIF/Community border price of the imported product, and resulted in underselling of 17,8 % which represents a duty payable of EUR 469 per tonne (WFE), which, based on the conversion ratios shown above, is equivalent to EUR 522/tonne for gutted and EUR 722/tonne for fillets.

(105) Provision should be made for review of the measures by the Commission if circumstances should change.

(106) In conformity with Community legislation and the international obligations of the Community, the provisional safeguard measures should not apply to any product originating in a developing country as long as its share of imports of that product into the Community does not exceed 3 %. In this regard it is noted that imports from Chile in the most recent period for which reliable data is available (second semester 2003) are below 3 %, and therefore it is appropriate to exclude Chile from the application of the additional safeguard duty under the provisional safeguard measures and review the position at the definitive stage of the investigation. The developing countries to which the provisional measures do not apply should therefore be specified and this is done in Annex II.

[1] Based on available information in the absence of reliable Eurostat data for this period.

11.2. **System of monitoring**

(107) As noted above, it is considered that the trend in imports of the product concerned has caused serious injury to the Community producers. It is therefore considered that it is in the interests of the Community to establish a system of retrospective surveillance in accordance with Article 11 of Regulation (EC) No 3285/94 and Article 9 of Regulation (EC) No 519/94 in relation to imports of the product concerned which have been put into free circulation in the Community. This will, in particular, allow imports from countries which are outside the application of provisional measures to be closely monitored. In order to ensure coherence, the surveillance should be in place for the same duration as the provisional measures. The surveillance should be administered in accordance with the scheme laid down in Article 308d of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Common Customs Code [1], as last amended by Regulation (EC) No 2286/2003 [2], and the Member States should notify the information to the Commission on a weekly basis.

11.3. **Duration**

(108) The provisional measures should not last more than 200 days. The measures should enter into force on 15 August 2004 and should remain in force for 176 days unless definitive measures are imposed or the investigation is terminated without measures before that time.

12. **COMMUNITY INTEREST**

12.1. **Preliminary remarks**

(109) In addition to unforeseen developments, increased imports, serious injury, causation and critical circumstances, it has been examined whether any compelling reasons exist which could lead to the conclusion that it is not in the Community interest to impose provisional measures. For this purpose, the impact of possible provisional measures on all parties involved in the proceedings and the likely consequences of taking or not taking provisional measures were considered on the basis of the evidence available.

12.2. **Interest of the Community producers**

(110) The Community producers have a combined annual turnover of over EUR 500 million, and, in addition to the direct employment of around 1 450 which they create, are estimated to indirectly support a further 8 000 jobs in the processing and other sectors. They are part of a major growth industry which has seen production double between 1995 and 2001. They are achieving increasing efficiency in the production of a product for which there is a growing market both in the Community and globally. They are viable and competitive in normal market conditions, and show increasing productivity.

(111) The Community producers' position is clearly in jeopardy unless the current level of low-priced imports is corrected. The proposed measures will apply to all imports of the product concerned other than those from developing countries whose exports to the European Community are no more than 3 % of imports to the Community. They would therefore apply to around 95 % of such imports. Therefore, it can be anticipated that the measures would be effective and allow the Community producers prices to rise to a fair level.

12.3. **Interest of the dependent industries**

(112) The areas in which salmon farming is undertaken tend to be remote – mainly on the West coast of Scotland and Ireland. There are limited employment opportunities and the economic activity generated by salmon farming makes an important contribution to these local economies. Without that contribution, many of the small local business which supply goods and services to the Community producers and their employees would cease to be viable. It is therefore in the interests of dependent industries that effective provisional measures are taken.

[1] OJ L 253, 11.10.1993, p. 1.
[2] OJ L 343, 31.12.2003, p. 1.

12.4. **Interests of producers of smolt and feed**

(113) It is in the interests of the major suppliers to the Community producers (such as smolt and feed producers) to have strong and predictable demand for their product at a price which allows them to make a reasonable profit. Given that a number of such suppliers have also extended substantial credit to the Community producers, it is also in their interests that the Community producers remain in business and able to service their debts. If the Community producers' situation does not improve, many of the smolt producers will suffer substantial bad debts which will reduce their profitability and in some cases may threaten their ability to continue trading. The same applies to feed producers. Therefore, it is in the interests of the smolt producers and feed producers for provisional measures to be taken.

12.5. **Interest of users, processors and importers in the Community**

(114) In order to evaluate the impact on importers, processors and users of taking or not taking measures, questionnaires were sent to the known importers, processors and users of the product concerned on the Community market. Importers/processors/users are normally one and the same and many are in fact related to exporting producers outside the Community, particularly in Norway. Responses were received from six importers/processors/users and from an association of processors. In addition, a number of processors' associations made representations to the Commission.

(115) Some argued that no measures should be taken because there had been only a short temporary fall in farmed salmon prices in the two to three months following the termination of anti-dumping measures against Norway in May 2003, and prices had since returned to normal. Processors stressed that any increase in prices would increase their cost base, reduce their sales and profitability and may lead to job losses and even de-localisation, stressing that employment in the fish processing sector is far higher than in the fish farming industry and in some cases provides employment in areas of low employment.

(116) Wholly reliable price data for Q1 2004 is not yet available from Eurostat. However, available information indicates that both import prices have increased since Q4 2003 to average around EUR 2,53/kilo in Q1 2004 and that the Community producers' prices also increased slightly. Nevertheless, the Community producers' prices remain substantially below a non-injurious price. Further, the latest information indicates that prices are again following a downward trend.

(117) The main costs incurred by processors are the cost of the raw material and employment costs, and it is true that an increase in raw material prices would increase the processors' costs. However, according to the information provided by processors, the cost of their raw material fell by 10 % between 2002 and 2003, having already fallen by 18 % between 2000 and 2002. In 2003, it was 26 % cheaper than in 2000. At the same time, the information provided by them indicates that their selling prices have remained about the same in 2002 and 2003. Three processors provided information as to the profitability of their salmon processing operation. This indicated that profitability had increased from 15 % in 2000 to 31 % in 2002, and 33 % in 2003. Although not necessarily representative of the processing industry as a whole, this level of profitability is not believed to be atypical. Some processors have contested this level of profitability, although they have not cooperated in providing details of their own profitability. In these circumstances, it appears that the processing industry is well able to absorb a modest increase in the cost of their raw material without any job losses or de-localisation. In any event, it is clear that current price levels are unsustainable in the medium to long term.

(118) Processors also stressed the need for traders in the principal European markets and consumers to continue to have access to good quality product at low prices. They expressed particular concern about the possibility of speculative buying immediately after the introduction of a tariff quota, and claimed that if the tariff quota is reached they might have to stop production. Finally, they stated that if measures were to be taken, they should be such as to maintain adequacy of supply and help bring price stability to the market in order that their costs could better be predicted. In this regard, whilst some maintained outright opposition to any form of measures, others indicated that if measures were to be imposed they would prefer a tariff quota system, certain expressing preference for a licensing system.

(119) It should be noted that the provisional measures proposed consist of tariff quotas based on average imports to the Community (including the new Member States) in the period 2001 to 2003 plus 5 %, beyond which an additional duty apply. Therefore, the processing industry throughout the Community should continue to have access to an adequate supply of raw material without any additional duty.

(120) Therefore, the disadvantages likely to be suffered by processors/users and importers, if any, are not considered such as to outweigh the benefits expected to accrue to the Community producers as a consequence of the proposed provisional measures, which are considered the minimum necessary to prevent further serious deterioration in the situation of the Community producers.

12.6. **Interest of consumers in the Community**

(121) As the product concerned is a consumer product, the Commission informed various consumer organisations of the opening of an investigation. No responses were received from consumer organisations. Given the magnitude of the margins between the whole fish ex-farm and the retail price of processed salmon products, it is considered that the measures are unlikely to have a material effect on retail prices and the impact on consumers is therefore considered to be minimal.

13. **EXTENSION OF TIME LIMIT FOR THE CURRENT PROCEEDINGS**

(122) Article 7 of Regulation (EC) No 3285/94 and Article 6 of Regulation (EC) No 519/94 provide that if the Commission considers that surveillance or safeguard measures are necessary, it shall take the necessary decisions no later than nine months from the initiation of the investigation, but that, in exceptional circumstances, that time limit may be extended by a further maximum period of two months.

13.1. **Reasons for extension**

(123) For the following reasons, it is considered that exceptional circumstances exist justifying the extension of the time limit for completing the safeguard investigations in relation to the products concerned by a further period of two months.

(124) On 1 May 2004, enlargement occurred and 10 new Member States joined the European Community. Up until that date the investigation in relation to the current proceedings was restricted to the EU-15. A large number of interested parties have cooperated in the investigation undertaken to date in relation to the product concerned, and it is anticipated that economic operators in the new Member States will also wish to fully cooperate in the further enquiries to be undertaken. In order to verify the further information received, the Commission will send further questionnaires to Community producers, feed and smolt producers, and importers, processors and users in the new Member States in order to ascertain their specific situation. In order to allow the economic operators concerned the opportunity to exercise their rights under Article 6 of Regulation (EC) No 3285/94 and Article 5 of Regulation (EC) No 519/94, they should be given a reasonable period within which to reply to the questionnaires. Moreover the Commission's services will thereafter require to verify the information provided in reply to the questionnaires through on-the-spot investigations at the premises of the parties concerned before proceeding to any conclusions.

(125) Following the completion of the Commission's further investigation, and prior to the adoption of definitive safeguard measures in relation to the products concerned, if any, the European Community would in addition be obliged to notify certain trade partners with which it has bilateral agreements and also to notify WTO trade partners of any proposed measures in a timely manner.

(126) Further, were provisional measures (which should run in parallel with the investigation) to come to an end in Q4 2004, this would create uncertainty in the market during its busiest period in the run up to Christmas.

13.2. **Extension of time limit**

(127) It is therefore considered that, in the circumstances outlined above, exceptional circumstances exist and the time limit for completion of the safeguard investigation in relation to farmed salmon should be extended by two months from 6 December 2004 to 6 February 2005,

HAS ADOPTED THIS REGULATION:

Article 1

System of tariff quotas and their additional duties

1. A system of tariff quotas is hereby opened for the period 15 August 2004 to 6 February 2005 in relation to imports into the Community of farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, classified within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13 (hereinafter farmed salmon). The volume of the tariff quotas and the countries to which they apply are specified in Annex I. The quotas have been calculated on a whole fish equivalent basis (WFE) and conversion ratios to fillets (Group 2) and non-fillets (Group 1) actually imported are 1:0,65 and 1:0,9 respectively.

2. Wild salmon shall not be subject, or allocated, to the tariff quotas. For the purpose of this Regulation, wild salmon shall be that in respect of which the competent authorities of the Member State where the customs declaration for free circulation is accepted are satisfied, by means of all appropriate documents to be provided by interested parties, that it was caught at sea for Atlantic or Pacific salmon or in rivers for Danube salmon.

3. For the purposes of determining the level of additional duty payable, farmed salmon falling within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00 shall fall within Group 1 in Annex I, whilst those falling within ex 0304 10 13 and ex 0304 20 13 shall fall within Group 2.

4. Subject to Article 2, imports of farmed salmon beyond the level of the tariff quota shall be subject to the additional duty specified in Annex I for the group to which they belong.

5. The conventional rate of duty provided in Council Regulation (EC) No 2658/87 ([1]), as last amended by Commission Regulation (EC) No 2344/2003 ([2]) or any preferential rate of duty, shall continue to apply to imports of farmed salmon.

6. If circumstances should change, these measures may be reviewed by the Commission.

Article 2

Developing countries

Imports of farmed salmon originating in one of the developing countries specified in Annex II shall not be subject, or allocated, to the tariff quotas.

([1]) OJ L 256, 7.9.1987, p. 1.
([2]) OJ L 346, 31.12.2003, p. 38.

Article 3

General provisions

1. The origin of the farmed salmon to which this Regulation applies shall be determined in accordance with the provisions in force in the Community.

2. Subject to paragraph 3, any release into free circulation in the Community of farmed salmon originating in a developing country shall be subject to:

(a) presentation of a certificate of origin issued by the competent national authorities of that country meeting the conditions laid down in Article 47 of Regulation (EEC) No 2454/93; and

(b) the condition that the product has been transported directly, within the meaning of Article 4, from that country to the Community.

3. The certificate of origin referred to in paragraph 2(a) shall not be required for imports of farmed salmon covered by a proof of origin issued or made out in accordance with the relevant rules established in order to qualify for preferential tariff measures.

4. Proof of origin shall be accepted only if the farmed salmon meet the criteria for determining origin set out in the provisions in force in the Community.

Article 4

Direct transport

1. The following shall be considered as transported direct to the Community from a third country:

(a) products transported without passing through the territory of any third country;

(b) products transported through one or more third countries other than the country of origin, with or without transshipment or temporary warehousing in those countries, provided that such passage is justified for geographical reasons or exclusively on account of transport requirements and provided that the products:

— have remained under the supervision of the customs authorities of the country or countries of transit or warehousing,

— have not entered into commerce or been released for consumption there, and

— have not undergone operations there other than unloading and reloading.

2. Proof that the conditions referred to in paragraph 1(b) have been satisfied shall be submitted to the Community authorities. That proof may be provided, in particular, in the form of one of the following documents:

(a) a single transport document issued in the country of origin covering passage through the country or countries of transit;

(b) a certificate issued by the customs authorities of the country or countries of transit containing:

— a precise description of the goods;

— the dates of their unloading and reloading or their lading or unlading, identifying the vessels used.

Article 5

Imports in the process of shipment to the Community

1. This Regulation shall not apply to products in the process of shipment to the Community within the meaning of paragraph 2.

2. Products shall be deemed to be in the process of shipment to the Community if they:

— left the country of origin before the date this Regulation begins to apply, and

— are shipped from the place of loading in the country of origin to the place of unloading in the Community under cover of a valid transport document issued before the date this Regulation begins to apply.

3. The parties concerned shall provide, to the satisfaction of the customs authorities, proof that the conditions laid down in paragraph 2 have been met.

However, the authorities may regard the products as having left the country of origin before the date this Regulation begins to apply if one of the following documents is provided:

— in the case of transport by sea, the bill of lading showing that loading took place before that date,

— in the case of transport by rail, the consignment note that was accepted by the railway authorities in the country of origin before that date,

— in the case of transport by road, the CMR contract for the carriage of goods or any other transport document issued in the country of origin before that date,

— in the case of transport by air, the air consignment note showing that the airline took the products over before that date.

Article 6

The Member States and the Commission shall cooperate closely to ensure compliance with this Regulation.

Article 7

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and apply until 6 February 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 August 2004.

For the Commission

Pascal LAMY

Member of the Commission

ANNEX I

CN code	TARIC code	Group	Origin (for groups 1 and 2)	Tariff quota (for groups 1 and 2) in tonnes (WFE)	Order Number for group 1	Order Number for group 2	Additional duty EUR/tonne	
							Group 1	Group 2
ex 0302 12 00	0302 12 00 21	1	Norway	163 997	90.780	90.788	522	722
	0302 12 00 22	1	Faeroes	22 230	90.694	90.695		
	0302 12 00 23	1	Other	20 108	90.077	90.078		
	0302 12 00 29	1						
	0302 12 00 39	1						
	0302 12 00 99	1						
ex 0303 11 00	0303 11 00 19	1						
	0303 11 00 99	1						
ex 0303 19 00	0303 19 00 19	1						
	0303 19 00 99	1						
ex 0303 22 00	0303 22 00 21	1						
	0303 22 00 22	1						
	0303 22 00 23	1						
	0303 22 00 29	1						
	0303 22 00 89	1						
ex 0304 10 13	0304 10 13 21	2						
	0304 10 13 29	2						
	0304 10 13 99	2						
ex 0304 20 13	0304 20 13 21	2						
	0304 20 13 29	2						
	0304 20 13 99	2						

ANNEX II

List of developing countries — excluded from the measures as they export less than 3 % of imports to the Community.

United Arab Emirates, Afghanistan, Antigua and Barbuda, Angola, Argentina, American Samoa, Anguilla, Antarctica, Aruba, Barbados, Bangladesh, Burkina Faso, Bahrain, Burundi, Benin, Brunei Darussalam, Bolivia, Brazil, Bahamas, Bhutan, Botswana, Belize, Bermuda, Bouvet Island, British Virgin Islands, British Indian Ocean Territory, Democratic Republic of Congo, Central African Republic, Congo, Côte d'Ivoire, Chile, Cameroon, Chad, Colombia, Costa Rica, Cuba, Cape Verde, Cayman Islands, Christmas Island, Cocos Islands (or Keeling Islands), Cook Islands, Djibouti, Dominica, Dominican Republic, Algeria, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Federated States of Micronesia, Falkland Islands, French Polynesia, French Southern Territories, Gabon, Grenada, Ghana, Gambia, Guinea, Equatorial Guinea, Guatemala, Guinea-Bissau, Guyana, Gibraltar, Guam, Honduras, Hong Kong, Haiti, Heard Island and McDonald Islands, Indonesia, India, Iraq, Iran (Islamic Republic of), Jamaica, Jordan, Kenya, Cambodia, Kiribati, Comoros, St Kitts and Nevis, Kuwait, Lao People's Democratic Republic, Lebanon, St Lucia, Sri Lanka, Liberia, Lesotho, Libyan Arab Jamahiriya, Morocco, Madagascar, Marshall Islands, Mali, Myanmar, Mongolia, Mauritania, Mauritius, Maldives, Malawi, Mexico, Malaysia, Mozambique, Macau, Mayotte, Montserrat, Namibia, Niger, Nigeria, Nicaragua, Nepal, Nauru, Netherlands Antilles, New Caledonia and Dependencies, Niue Island, Norfolk Island, Northern Mariana Islands, Oman, Panama, Peru, Papua New Guinea, People's Republic of China, Philippines, Pakistan, Palau, Paraguay, Pitcairn, Qatar, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Seychelles, Sudan, Sierra Leone, Senegal, Somalia, Suriname, São Tomé and Príncipe, El Salvador, Syrian Arab Republic, Swaziland, South Georgia and South Sandwich Islands, St Helena and Dependencies, St Pierre and Miquelon, Togo, Tunisia, Tonga, East Timor, Trinidad and Tobago, Tuvalu, Tanzania (United Republic of), Chinese Taipei, Tokelau, Turks and Caicos Islands, United States minor outlying islands, Uganda, Uruguay, St Vincent and the Northern Grenadines, Venezuela, Vietnam, Vanuatu, Virgin Islands of the United States of America, Wallis and Futuna Islands, Yemen, South Africa, Zambia and Zimbabwe.